IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 6470 of 1999

Between:

APSRTC, rep. by its Vice Chairman &

Managing Director, Mushirabad, Hyderabad.

..... PETITIONER

AND

1. State Transport Appellate Tribunal, AP,

Hyderabad, rep. by its Presiding Officer.

2. The Regional Transport Authority,

Vizianagaram, rep. by its Secretary.

3. K.Pydichatti Naidu, Bus Operator, Gantyada,

Vizianagaram District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction especially in the nature of writ of Certiorari calling for the records relating to the impugned order dated 24.7.1998 made in R.P.No. 34/96, State Transport Appellate Tribunal, AP, Hyderabad, dismissing the revision petition filed against the order in Rc.No. 12101/A1/95, dated 16.1.1995, Regional Transport Authority, Vizianagaram, granting mofusil service permit to 3rd respondent on the route, Budetanapalli to Vizianagaram M.R.Hospital,

and quash the same as being hit by the provisions of Section 104, Motor Vehicles Act, 1988.

For the Petitioner: Mr.K.Srinivasa Rao, Standing Counsel for APSRTC

For the Respondents 1&2 : Government Pleader for Transport

For the Respondent No.3: Mr. T.Venkat Ramana, Advocate

The Court Made the Following :

::ORDER::

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The APSRTC assails the order of the 1st respondent – State Transport Appellate Tribunal, dated 24.7.98 in RP No. 34/98.

The 3rd respondent had submitted an application for grant of a pucca stage carriage permit on the mofusil route Budetanapalli to Vizianagaram M.R.Hospital (via) Lakkidam Junction, Ramavaram, Narava, Ayyannapeta, Salipeta. The RTA, Vizianagaram considered the application and by a resolution dated 16.10.1995 over-ruled the objection of the writ petitioner and granted permit to the 3rd respondent. In its resolution dated 16.10.95 the RTA – the 2nd respondent herein, recorded that a joint survey revealed that the over-lapping portion from Lakkidam Jn. to Ayyannapeta Jn. was found to be only to an extent of 7.9 km, and thus there was no violation of any approved scheme and granted the permit.

Aggrieved, the writ petitioner preferred a revision to the 1st respondent u/Sec. 90 of the Motor Vehicles Act 1988 (for short 'the Act'), contending, *inter alia*, that the grant of permit by the 2nd respondent violates the conditions of the approved scheme in G.O. Ms. No.634 Home (Transport-V) Department, dated 19.5.1975. By the order impugned herein the 1st respondent rejected the revision on the ground that in view of the law declared by this court in ***APSRTC vs D.Ch.Satyanarayana Raju and Others (),*** partial over-lapping of the notified route in G.O.Ms. No. 634 by the permit granted to the 3rd respondent is not prohibited and the revision is thus misconceived. Aggrieved the APSRTC is before this court.

The approved scheme in G.O. Ms. No.634 relates to the route Visakhapatnam to Vizianagaram (via) Pendurti, Kothavalasa, S.Kota, Dharmavaram, Sitampeta,

Tamarapalli and Narva. Clause-4 of the G.O. after setting out the number of busses proposed to be operated on the route by the APSRTC states that these busses are proposed to be operated to the complete exclusion of all other persons holding stage carriage permits on the proposed route and such other persons holding stage carriage permits on the routes overlapping completely or partially on the proposed route, except to the extent specified in the Note. The Note *inter alia* specifies that the scheme (GO Ms. No.634) shall not affect the existing holders of stage carriage permits in respect of such route or routes which partially overlap the proposed route. On a true and fair construction of the conditions of the approved scheme in G.O.Ms. No.634, partial overlapping of the route in the approved scheme is enabled only to the existing holders of stage carriage permits and not to new applicants for a route which has the potential of even a partial overlapping of the notified route.

As per an earlier decision of a Division Bench of this court in *D.Ch.Satyanarayana Raju* (supra) which was followed by the 1st respondent, partial overlapping by even a new stage carriage permit was allowed. However by the decision of a Full Bench of this court in ***Divisional Manager, APSRTC vs State Transport Appellate Tribunal, AP, Hyderabad and others ()*** the earlier view was eschewed. An identical condition in an approved scheme in G.O.Ms. No.625, dated 19.5.75 fell for the consideration of the Full Bench of this court in the above case. The Full Bench laid down the law in no uncertain terms that the Note saved only existing permits but does not permit grant of new permits. In view of the decision of the Full Bench supra, the order of the 1st respondent in R.P.No. 34/96 dated 24.7.98 is unsustainable as is the order of the 2nd respondent in its resolution dated 16.10.95 granting a stage carriage permit in favour of the 3rd respondent for the mofusil route Budetanapalli to Vizianagaram. Consequently the permit granted to the 3rd respondent by the 2nd respondent's proceedings dated 16.10.1995 is set aside hereby.

Sri T.Venkataramana, learned counsel for the 3rd respondent has submitted that against the judgment of the Full Bench supra, the matter was carried by the concerned private bus operators to the Supreme Court and the Supreme Court has granted stay of the operation of the judgment of the Full Bench and the matter is pending final hearing before the Supreme Court. However the learned Standing Counsel for the petitioner-APSRTC has contended that the judgment of the Full Bench has not been suspended by the Supreme Court. Neither of the parties have

chosen of course to place the order of the Supreme Court for consideration of this court. Therefore as at present advised, the decision of the Full Bench operates *proprio vigore* and binds the parties.

Sri Venkataramana, learned counsel for the 3rd respondent has contended that after the grant of the permit by the 2nd respondent to the 3rd respondent in the year 1995, the 2nd respondent has granted the 3rd respondent a variation of the route and since the variation is in substance considered as grant of a new permit and as the petitioner herein has not challenged the variation granted in favour of the 3rd respondent, no relief should be granted to him. This contention does not commend acceptance of this court. The challenge in this writ petition by the APSRTC is to the grant of the initial permit by the 2nd respondent as confirmed in the revision by the 1st respondent. The permit granted to the 3rd respondent is seen to be subversive of the conditions of the approved scheme in G.O. Ms. No.634 and the permit granted by the 2nd respondent must accordingly perish. If the original grant of permit in favour the 3rd respondent is itself void on account of being in violation of the approved scheme in G.O.Ms. No.634 any subsequent variation of the initial permit must suffer logically the same fate. The subsequent grant of variation by the 2nd respondent would not in any manner legitimise the patent illegality of the initial grant.

On the analysis above the writ petition requires to be allowed and is allowed. No order as to costs.

Date: 2.12.2004 ----------

Pvsn Justice G. RAGHURAM

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, The Chief Justice on this Thursday, the Second day of December, Two Thousand and Four.

..... Registrar

To

1. The Presiding Officer, State Transport Appellate Tribunal, AP,

Hyderabad.

2. The Secretary, The Regional Transport Authority,

Vizianagaram.

3. Two copies to the Government Pleader for Transport, High Court Buildings, Hyderabad (OUT)

4. 2CD copies